83-964

Office-Supreme Court, U.S.
FILED
OCT 7 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term 1983

IN THE MATTER OF McCLELLAND C. SMITH, Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

McCLELLAND C. SMITH
116 Franklin Street
Middletown, Ohio 45042
(513) 424-2210

Petitioner Pro-se

QUESTIONS PRESENTED FOR REVIEW

1. Does the use of fraud, concealment of material facts, and/or gross neglect by the nominee for Federal Judge or those who investigate the nominee's background for the U.S. Senate to determine nominee's qualifications for Judge void the confirmation? This is not a challenge to the appointment or confirmation process, but questions only whether the Respondents (Appellees) withheld, concealed information necessary for the Senate to make a valid decision?

2. Errors of Court of Appeals for District of Columbia Circuit.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. _____

McCLELLAND C. SMITH

PETITIONER,

v.

WILLIAM C. CONNER, UNITED
STATES DISTRICT JUDGE,
ATTORNEY GENERAL OF THE
UNITED STATES,
AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON FEDERAL
JUDICIARY,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, McClelland C. Smith, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the District of Columbia circuit entered on 22 June 1983.

OPINION BELOW

The Court of Appeals entered its ORDER denying Petitioner's Petition for Rehearing on 13 July 1983. A copy of the order is attached as Appendix A.

JURISDICTION

On 13 July the Court of Appeals entered the Order denying Petitioner's Petition for Rehearing, thus granted Summary Affirmance to Respondents. (App. A). The jurisdict-

ion of this Court is invoked under the United States Constitution Art. 3 Sec. 2 Sub. 1.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Article 3, Sections 1 and 2 (1).

> Sec. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts shall hold their offices during good behavior etc.
>
> Sec. 2 (1). The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the law of the United States etc.

STATMENT OF THE CASE

On 22 June 1983, a panel of the Circuit Court for the District of Columbia Circuit granted Respondents Motion for Summary Affirmance, citing among the references McClure v. Carter, 513 F. Supp. 265 (D. Idaho), aff'd 454 U.S. 1025 (1981). This was a challenge to the appointment

of Circuit Judge Mikva, one of the panel members. Petitioner believes this disqualified Judge Mikva from sitting on panel. Petitioner would like to cite this case on page 267 footnote 5.

> The constitutional question and the more general question of Judge Mikva's qualifications and fitness for judicial office were extensively debated on the floor of the Senate, 125 Cong. Rec. S13342 - S13362 (daily ed. Sept. 25, 1979). During the debate, Senator Edward Kennedy introduced two detailed legal memoranda prepared by the Justice Department on the constitutional question, so that the Senators would be fully informed. Id. at S13360 - S13362.

If Petitioner's complaint against the Nominee (now Judge) Conner had been disclosed to the Senate and debated in like manner, then Petitioner would have had no case. It is the concealment of the complaint from the Senate that Petitioner asks the Court to consider.

In this Order is the statement; "In particular, we note that appellant lacks standing to challenge the appointment of a federal judge". Petitioner does not challenge the appointment of a federal judge, in fact none of Respondents have the authority to appoint a federal judge. The President, the only person with authority to appoint a federal judge is not a party to this action, so that challenge to judge's appointment was not before the Court.

In the Order of 22 June, 1983 the last paragraph reads; "It is FURTHER ORDERED by the Court, sua sponte, that the Clerk withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing. See Local Rule 14, as amended June 15, 1982". Petitioner believes that indicates the Court had pre-determined to deny the petition for re-hearing before it was submitted.

On 9 May 1983, a panel of the Circuit Court for the District of Columbia Circuit denied Petitioner Motion for the Appointment of a Special Prosecutor; It was on May 2, 1983 that Petitioner filed his Brief by Certified Mail and the Brief was received on May 4, 1983, but Petitioner

was told by Clerk's Office the Brief was not filed until 12 May 1983. (Three days after denial of the above Motion). Petitioner believes there may be Obstruction of Justice. That a person or persons unknown to Petitioner, decided the panel should not see the Brief in ruling on Petitioner's Motion to Appoint a Special Prosecutor. (Anything in Brief that would convince panel to Appoint a Special Prosecutor is still in Brief.)

In this Order Note; "Request for a Special Prosecutor to investigate alleged activities of United States District Judge" Petitioner did not allege any activities of Judge Conner as a Judge; All charges are in the time frame before the nominee was sworn in as Judge. Thus nominee was private citizen at time of any acts of omission or commission are charged in this action!!

REASON FOR GRANTING THE WRIT

The Petitioner does not challenge the appointment of a federal judge; As stated none of Respondents have authority to appoint a federal judge. Petitioner asked the Court, Does the use of fraud, concealment of material facts, and/or gross neglect by the nominee or those who investigate the nominee's background for the U.S. Senate to determine the nominee's qualification for Judge void the confirmation??

Article 3 Section 1 is clear on life tenure for federal judges during "Good Behavior" and on Impeachment as method of removal from office. There is no mention, to Petitioner's knowledge of how to remove a judge from office if or when fraud was used to gain the office. Petitioner believes this is a open question and a very important Constitutional question that has not but should be addressed by the Court.

In a broad sense the recent confirmation of Secretary of Labor Raymond Donovan is similar, since both involve charges of concealment of information from Senate.

Petitioner cites Hazel-Atlas Glass Co. v. Hartford-Empire Co. 64 S. Ct. 997 (1944) Id. 246, Id. 251 for this Court's comments on fraud and tampering with the administration of justice. United States v. Hartford-Empire Co. 73 F. Supp. 979 (1947) Id. 6., Id. 7 thru 14 to indicate that fraud was not an issue in obtaining the patents, and was not a issue by the Senate in confirming a judge. In related action, Hatch v. Ooms (D.C.) 69 F. Supp. 788 (1947) three Attorneys were disbarred for fraud. Petitioner asks the Court, if one of these Attorneys had been appointed to bench, after the fraud was committed but before discovery, how would he have been removed? This is the heart of Petitioner complaint

and question of the Court.

Article 3 Section 2 Sub. 1 Gives this Court and the inferior Courts jurisdiction, and the INTEGRITY OF THE COURTS IMPOSES A DUTY ON THE COURT TO PREVENT AND/OR REMOVE A JUDGE THAT HAS OBTAINED THE OFFICE BY FRAUD!!!

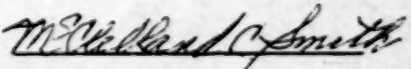
The errors of the Court of Appeals for the District of Columbia Circuit in permiting Circuit Judge Mikva to sit on panel when or after his appointment being challenged prevented petitioner a fair and impartial hearing.

The delay in filing of Petitioner's Brief during the Court's consideration of Motion denied Petitioner a fair hearing on this Motion. Petitioner believes this was deliberate act to obstruct justice and prevent the Brief's use in panel's deliberations.

CONCLUSION

For the foregoing reasons, petitioner McClelland C. Smith respectfully requests that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,



McClelland C. Smith
116 Franklin Street
Middletown, OH 45042
Telephone (513) 424-2210
Pro se

Dated 1 November, 1983

APPENDIX A

No. 83-1200 September Term 1982

Civil Action No. 82-02256

McClelland C. Smith
Appellant

v.

William C. Conner, U.S. District
Court Judge, et al.

BEFORE: Mikva, Edwards, Circuit Judges
and MacKinnon, Senior Cirtuit
Judge

ORDER

On consideration of the Appellant's petition for rehearing, it is

ORDERED by the Court that the aforesaid motion is denied.

FOR THE COURT:

George A. Fisher
Clerk

BY:

Robert A. Bonner
Chief Deputy Clerk

Circuit Judge Mikva did not participate in this Order.

No. 83-1200

McClelland C. Smith

Civil Action No. 82-02256

v.

William C. Conner, U.S. District Court Judge, et al.

BEFORE: Mikva and Edwards, Circuit Judges and MacKinnon Senior Circuit Judge

ORDER

Upon consideration of appellees' motion for summary affirmance and the response thereto, it is

ORDERED by the Court that the motion is granted. Appellees have shown "that the merits of (their position) so clearly warrant relief as to justify expedited action." Walker v. Washington, 627 F. 2d 541, 545 (D.C. Cir. 1980); United States v. Allen, 408 F. 2d 1287, 1288 (D.C. Cir. 1969). In particular, we note that appellant lacks standing to challenge

the appointment of a federal judge. See Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464 (1982); McClure v. Carter, 513 F. Supp. 265 (D. Idaho), aff'd 454 U.S. 1025 (1981).

It is FURTHER ORDERED by the Court, sua sponte, that the Clerk withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing. See Local Rule 14, as amended June 15, 1982.

Per Curiam

Circuit Judge Mikva did not participate in this Order.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of

Appointing Special Prosecutors

Ethics in Government Act of 1978

Filed May 9, 1983

George A. Fisher. Clerk

In Re:

Request for a Special Prosecutor to investigate alleged activities of United States District Judge

No. 83-1

Before: Robb, Senior Circuit Judge, Presiding, Lumbard, Senior Circuit Judge and MOrgan, Senior Circuit Judge

ORDER

Upon consideration of the motion by McClelland C. Smith for the Appointment of a Special Prosecutor to investigate certain alleged activities by a United States District Judge for the Southern District of New York, it is

ORDERED, by the Court, that the motion for the Appointment of a Special Prosecutor is denied. The Division for the Purpose of Appointing Special Prosecutors has no jurisdiction to grant the relief requested.

Per Curiam
For the Court:

George A. Fisher, Clerk